



discovery or retention of experts.<sup>1</sup> Following the Court's ruling on the cross-motions for summary judgment on the duty to defend, and if any remaining disputes exist that are then justiciable that require discovery and the retention of experts, the Parties will meet and confer and submit an agreed Scheduling Order within thirty (30) days of the Court's order on the summary judgment matter(s).

On October 19, 2022, the Court granted the Parties' Motion, entering the dates requested. Doc. #17. Since that time, it has become apparent that additional time will be necessary to brief the matters before this Court, as there was a Second Amended Petition filed in the Underlying Lawsuit, currently set for trial in February 2023.

Therefore, the Parties request the Court enter the following Motion for Summary Judgment Amended Briefing Schedule:

<b>Event</b>	<b>Deadline</b>
Plaintiff to file Motion for Summary Judgment	<b>January 11, 2023</b>
Defendants to file Response/Cross-Motion for Summary Judgment	<b>February 2, 2023</b>
Plaintiff to File Reply in Support of its Motion for Summary Judgment, Response in Opposition to Defendants' Cross-Motion for Summary Judgment	<b>February 23, 2023</b>
Defendants to File Reply in Support of Cross-Motion for Summary Judgment	<b>March 13, 2023</b>

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<sup>1</sup> The Parties further agree that, if this Court finds that the duty to defend does not exist and the same reasons that negate the duty to defend negate any possibility of a duty to indemnify, then the latter also can be determined as a matter of law. *See Farmers Tex. Cnty. Mut. Ins. Co. v. Griffin*, 955 S.W.2d 81, 84 (Tex. 1997) ("We now hold that the duty to indemnify is justiciable before the insured's liability is determined in the liability lawsuit when the insurer has no duty to defend *and the same reasons that negate the duty to defend likewise negate any possibility the insurer will ever have a duty to indemnify.*" (emphasis in original)). Plaintiff believes such a circumstance will present itself here, but Defendants do not.

Respectfully Submitted,

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